

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAHADAT HOSSAIN

Petitioners,

Docket No.

v.

U.S. DEPARTMENT OF HOMELAND SECURITY,
KEVIN MCALEENAN, KEN CUCCINELLI, U.S.
CITIZENSHIP AND IMMIGRATION SERVICES, USCIS
TEXAS SERVICE CENTER, U.S. ATTORNEY
GENERAL WILLIAM P. BARR, UNITED STATES
BUREAU OF CONSULAR AFFAIRS, JOHN DOES 1 – 10,
JANE DOES 1-10, and ABC AGENCY 1 – 10,

Defendants.

PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

The Petitioner, Shahadat Hossain (Petitioner) hereby petition this honorable Court for a writ of mandamus and for declaratory and injunctive relief, to compel the defendants collectively and individually, WILLIAM P. BARR, U.S. ATTORNEY GENERAL, KEVIN MCALEENAN, KEN CUCCINELLI, United States Department of Homeland Security, United States Department of State, United States Bureau of Citizenship and Immigration Services, United States Bureau of Consular Affairs, National Visa Center, and additionally and in the alternative as necessary, John Does

1 – 10, Jane Does 1-10, and ABC Agency 1-10, the latter being presently unknown persons or agencies who are responsible for processing Petitioner's I-485, Application to Register Permanent or Adjust Status which was filed and received on October 18, 2016, under SRC-1790027634, **as Exhibit-A.**

This action lies pursuant to law including the 5th Amendment due process clause and other provisions of the United States Constitution, the Mandamus Act (28 U.S.C. § 1361), the All-Writs Statute (28 U.S.C. § 1651), the Declaratory Judgment Act (28 U.S.C. § 2201) and the Administrative Procedures Act (5 U.S.C. § 551 et seq.).

This action challenges the unreasonable delay of the Defendants, and each of them individually, and/or one, more and/or all of such Defendants collectively, in adjudicating and processing the Petitioner's I-485 petition.

PARTIES

1. Petitioner Shahadat Hossain, ("Petitioner") is a national of Bangladesh, whose asylum application was granted on October 6, 2015, and filed I-485 petition, which was received by the Service on October 18, 2016, which is currently pending. Petitioner currently resides at 35 East 106th

Street, Apt. 9K, New York, NY 10029, which is within this District. See Change of Address form as Exhibit B.

1. Petitioner, Shahadat Hossain, A206-874-443, a national of Bangladesh.

2. Audrey Strauss, Attorney for the Defendant, Southern District of New York.

3. Michael R. Pompeo, Defendant, is Secretary of State, United States Department of State.

4. KEN CUCCINELLI is Acting Director of the United States Bureau of Citizenship and Immigration Services.

5. William P. Barr, U.S. Attorney General, U.S. Department of Justice.

6. KEVIN MCALEENAN, Acting DHS Director, Secretary of Homeland Security.

7. The United States Bureau of Citizenship and Immigration Services (BCIS) is an agency of the United States government and a division of, or affiliated with, the Department of Homeland Security.

8. The United States Bureau of Consular Affairs is an agency of the United States government and a division of, or affiliated with, the Department of State.

9. ABC Agency 1-10 are agencies of the United States government, presently unknown, which are or were responsible for some aspect or all aspects of processing the Petitioner's application for a visa.

JURISDICTION AND VENUE

11. Jurisdiction in this Court is proper pursuant to *inter alia* 28 U.S.C. §§ 1331, 1361, and 1651, and pursuant to 7 U.S.C. § 501 (Administrative Procedure Act). This Court has subject matter jurisdiction over this cause pursuant to 28 U.S.C. § 1331 (federal question statute), since this is a civil action arising under the Constitution and laws of the United States including, without limitation, provisions of the Immigration and Nationality Act, Title 8, § 1101 et seq., and all applicable regulations, policies, and procedures arising thereunder. This Court may grant relief herein under federal laws including, without limitation, 28 U.S.C. § 1361 (Mandamus Act), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 2201 (Declaratory Judgment Act), and under 28 U.S.C. § 701 et seq. (Administrative Procedure Act).

12. The Petitioner has exhausted his judicial remedies. The Petitioner has filed his I-485 application for Adjustment of Status and has provided the Defendants with documents that clearly establish that he has a right to the relief requested.

13. This action challenges only the pace and unreasonable delay in processing the Petitioner's adjustment of status application, not any actual decision or denial of relief by the agency or the granting or denial of a petition, and therefore the jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply.

14. Pursuant to 28 U.S.C. § 1391 (e) venue is proper in this District, because Defendants operate in this District and Petitioner resides in this District.

ALLEGATIONS OF FACT

15. Petitioner, a native and national of Bangladesh, was granted principle Asylee in the United States.

16. Petitioner filed application on Form I-485 on October 18, 2016.

17. Despite requests to the Defendants for information regarding the status of Petitioner I-485 application, there has been no resolution of the application. As of the date of the filing of this action, there has been no action on the applications.

18. Under the APA, Defendants have a non-discretionary and non-delegable duty to resolve outstanding matters, such as the instant application, within a reasonable time. 5 U.S.C. § 555 (b). This Court may

compel any agency to act if agency action is unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706 (1).

19. Pursuant to these provisions, the Defendants have a clear obligation to process and fully adjudicate the Petitioner's outstanding application, within a reasonable time. *See, e.g., Loo v. Ridge*, No. 04 CV 5553 (E.D.N.Y. March 14, 2007); *Yu v. Brown*, 36 F. Supp.2d 922, 925, 927-30 (N.M. 1999); *Panescu v. I.N.S.*, 76 F. Supp.2d 896, 901 (N.D. Ill. 1999).

20. Petitioner thus has a clear and indisputable right to the relief requested, to wit, the resolution of petition of I-485 application; and there is a plainly defined and peremptory duty on the part of the Defendants to do the act in question; and no other remedy is available to the Plaintiffs. Mandamus relief is therefore appropriate. *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988); *Lovullo v. Froehlke*, 468 F.2d 340, 343 (2d Cir. 1972). Declaratory and injunctive relief are appropriate as well.

21. Among other rights, the Petitioners' right to due process of law and equal protection under the 5th Amendment have been and are being violated by Defendants' failures as described herein.

22. Defendants, despite having a duty to act within a reasonable time, have failed to process and adjudicate Petitioner's application in a timely manner and within a reasonable time.

23. Defendants' duty to process and adjudicate Petitioners' application in a reasonable time is a non-discretionary duty mandated by federal and judicial precedent.

24. Defendants' conduct in failing to process Petitioner's application and adjudicate his application in a reasonably timely manner has caused unnecessary and injurious delays to Petitioner, in violation of his rights.

25. Defendant has exhausted his/her administrative remedies and has determined that no such remedy exists.

Count I
Mandamus Action
28 U.S.C. § 1651

26. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

27. Defendants are charged with the mandatory responsibility of administering and implementing the Immigration and Nationality Act.

28. Defendants bear the sole responsibility for the timely adjudication of the Petitioner's application.

29. Defendants have failed to discharge their mandated duties.

30. As a result, the Petitioner has suffered and continues to suffer irreparable harm and damages entitling him to declaratory, injunctive and other relief.

31. Petitioner has exhausted all possible administrative remedies and is without any other adequate remedy at law.

Count II
Administrative Procedures Act
5 U.S.C. §§ 555 and 702 et seq.

32. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

33. By failing to render a timely decision on Petitioner's alien relative applications, Defendants have violated the Administrative Procedures Act and this constitutes agency action that is arbitrary and capricious, and not in accordance with law.

34. Defendants have failed to discharge their mandated duties.

35. As a result, Petitioner has suffered and continues to suffer irreparable harm and damages entitling him to declaratory, injunctive and other relief.

Count III
Declaratory Judgment Act
28 U.S.C. § 2201

36. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

37. Petitioner contends that Defendants' actions and decisions relating to delays in the adjudication of his application are unconstitutional, violate the Immigration and Nationality Act, and are arbitrary and capricious, and seeks a declaration to that effect pursuant to 28 U.S.C. § 2201.

38. Defendants have failed to discharge their mandated duties.

39. As a result, Petitioner has suffered and continues to suffer irreparable harm and damages entitling him to declaratory, injunctive and other relief.

Count IV
Equal Access to Justice Act
5 U.S.C. § 504 and 28 U.S.C. § 2412

40. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

41. Costs and attorneys' fees will be sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412 (d), et seq.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will grant him the following relief:

- i. Assume jurisdiction over this cause;
- ii. Declare that Defendants' failure to act is illegal, arbitrary, capricious, and an abuse of discretion;
- iii. Compel Defendants and their employees, servants, and agents to timely adjudicate, process, and resolve the Petitioner's outstanding I-485 Application to Register Permanent Resident or adjust status;
- iv. Award Petitioner attorney's fees, costs and other appropriate relief pursuant to the Equal Access to Justice Act; and
- v. Such other and further relief as this Court may deem just and proper.

Dated: New York, New York

July 15, 2020



Khagendra Gharti-Chhetry, Esq.
Attorney for Petitioner
Chhetry & Associates, P.C.
363 7th Avenue, Suite 1500
New York, New York 10001
(212) 947-1079

Verified Writ of Mandamus

I, SHAHADAT HOSSAIN, being duly sworn, depose and say that: I am the petitioner in the within action for a writ of Mandamus; I have read the foregoing writ and know the contents thereof; the contents of the Complaint are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

SHAHADAT HOSSAIN
SHAHADAT HOSSAIN

Subscribed and sworn to before me
on 14 day of July, 2020



Notary Public

My commission expires on 01/25/2022

KHAGENDEA CHARTI-CHMETRY
Notary Public, State of New York
No. 31-4920542
Qualified in New York County
Commission Expires Jan. 25, 2022

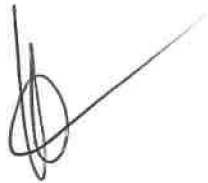
CERTIFICATE OF SERVICE

I, Khagendra Gharti-Chhetry, certify that on July 15, 2020, I served one set of **SUMMONSES IN A CIVIL ACTION, AND PETITIONS FOR WRIT OF MANDAMUS** electronically by ECF filing upon Attorney for Defendants and the Parties at the following addresses:

1. Audrey Strauss
Attorney for the Defendant
Southern District of New York
1 Saint Andrews Plaza,
New York, NY 10007
(212) 637-2200
2. United States of America
c/o U.S. Attorney for Southern District of New York
1 Saint Andrews Plaza,
New York, NY 10007
3. William P. Barr, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
4. Secretary of Homeland Security
20 Mass Avenue, NW
Washington, D.C. 20529
5. Director, U.S.C.I.S.
26 Federal Plaza
New York, NY 10278
6. MICHAEL R. POMPEO, Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

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Washington, DC 20520

7. KEN CUCCINELLI, Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, DC 20529
8. KEVIN MCALEENAN, Acting Director of DHS
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington, DC 20528
9. Director, U.S. Citizenship and Immigration Services
Texas Service Center
P.O. Box 851488 – Dept. A
Mesquite, TX 75185



Khagendra Gharti Chhetry, Esq
Chhetry & Associates, P.C.
363 7th Avenue, Suite 1500
New York, NY 10001
Tel.: (212) 947-1079
Fax: (212) 947-1081

EXHIBIT A

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE October 20, 2016	
CASE TYPE I-485, Application to Register Permanent Residence or Adjust Status		USCIS ALIEN NUMBER A206874443	
RECEIPT NUMBER SRC1790027634	RECEIVED DATE October 18, 2016	PAGE 1 of 1	
PRIORITY DATE	PREFERENCE CLASSIFICATION	DATE OF BIRTH June 01, 1987	

SHAHADAT HOSSAIN 1590 MADISON AVENUE, APT 18F NEW YORK, NY 10029		10 00001297	PAYMENT INFORMATION: Application/Petition Fee: \$985.00 Biometrics Fee: \$85.00 Total Amount Received: \$1,070.00 Total Balance Due: \$0.00
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NAME AND MAILING ADDRESS

The above application/petition has been received by our office and is in process.

Please verify your personal information listed above and immediately notify the USCIS National Customer Service Center at the phone number listed below if there are any changes.

Please note that if a priority date is printed on this notice, the priority does not reflect earlier retained priority dates.

Next Steps:

- USCIS will schedule a biometrics appointment for you to have your biometrics electronically captured at a USCIS Application Support Center (ASC). You will be receiving a biometrics appointment notice by mail with the specific date, time, and place where you will have your fingerprints and/or photographs taken.
- You must wait to receive your biometrics appointment notice before going to the ASC for biometrics processing.
- This notice does not serve as your biometrics appointment notice.

If you have questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833. Please also refer to the USCIS website: www.uscis.gov.


If you have any questions or comments regarding this notice or the status of your case, please contact our customer service number.

You will be notified separately about any other case you may have filed.

June 1, 1987 *May 1, 2016 Application* *received Oct 19, 2016*
RFE - Feb 27, 2017
Under - June 9, 2017

Confirmation # *T 1 B 00 8 1 9 0 4 4 1 3 T S C*
(11-300 Pass)

USCIS Office Address: USCIS Texas Service Center P.O. Box 851488 Mesquite, TX 75185-1488	USCIS Customer Service Number: (800)375-5283
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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
566 VETERAN DRIVE., SUITE 101
PEARSALL, TX 78061

Chhetry & Associates, P.C.
Chhetry, Khagendra Gharti
363 7th Avenue
Suite 1500
New York, NY 10001

Grants

Date: Oct 6, 2015

File A206-874-443

In the Matter of:
HOSSAIN, SHAHADAT

Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

Enclosed is a copy of the oral decision.

Enclosed is a transcript of the testimony of record.

You are granted until _____ to submit a brief to this office in support of your appeal.

Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

✓ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,

Immigration Court Clerk

UL

cc: JUSTIN NIELSEN
8940 FOURWINDS DR., 5TH FLOOR
SAN ANTONIO, TX 78239

EXHIBIT B



Alien's Change of Address Card

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form AR-11
OMB No. 1615-0007
Expires 03/31/2021

NOTE: An asterisk (*) indicates a mandatory field that must be completed.

Information About You

*Family Name (Last Name)	*Given Name (First Name)	Middle Name (if applicable)
HOSSAIN	SHAHADAT	

I am in the United States as a: ☐ Visitor ☐ Student ☐ Permanent Resident ☒ Other (Specify) ASYLEE

Country of Citizenship	*Date of Birth (mm/dd/yyyy)
BANGLADESH	06/01/1987

Alien Registration Number (A-Number) (if any)

► A- 2 0 6 8 7 4 4 4 3

Information About Your Address

*Present Physical Address (No PO Boxes)

*Street Number and Name	Apt. Ste. Flr.	Number
35 EAST 106TH STREET	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	9K
*City or Town	*State	*ZIP Code
NEW YORK	NY	10029

Previous Physical Address

Street Number and Name	Apt. Ste. Flr.	Number
1590 MADISON AVENUE	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	18F
City or Town	State	ZIP Code
NEW YORK	NY	10029

Mailing Address (optional)

Street Number and Name	Apt. Ste. Flr.	Number
N/A	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
City or Town	State	ZIP Code

Your Signature

*Your Signature	Date of Signature (mm/dd/yyyy)
SHAHADAT HOSSAIN	07/14/2020